

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5503 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDERLAL K.BHATIA

Versus

GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 5503 of 1990
MR KETAN A DAVE for Petitioner No. 1
MR HD DAVE for Respondent No. 1
MR MITUL K SHELAT for Respondent No. 2
RULE SERVED for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 23/09/2004

ORAL JUDGEMENT

Heard Mr.Ketan Dave, learned advocate appearing

for the petitioner, Mr.HD Dave, learned Assistant Government Pleader for the respondent No.1 i.e. State and Mr.Mitul Shelat, learned Advocate appearing for the respondent NO.2 i.e. Ahmedabad Municipal School Board.

2. This petition has been filed under Article 226 of the Constitution of India seeking directions to the respondents to pay to the petitioner insurance coverage amount of RS.20,000/- with running interest thereon and saving benefits as per the pensionary scheme.

3. It is the case of the petitioner that insurance scheme was brought into force by the Government of Gujarat vide Resolution dtd.10/11/1981 and on account of death of the petitioner's wife, a claim for insurance payment was made. The petitioner's wife was working as a Primary Teacher in the respondent School Board. The petitioner's wife was originally employed as a primary teacher under the Ahmedabad District Panchayat. She was working as an Assistant teacher at Sindhi Primary School No.3, Sardar-nagar. This school was run by Ahmedabad District Panchayat, Primary Education Committee up to 31/8/1986. Thereafter, this school was transferred with all its assets and liabilities and employees to the School Board with effect from 1/9/1986 consequent upon the inclusion of Sardarnagar and certain other areas of east of Ahmedabad in the limits of the city of Ahmedabad effective from 23/2/1986, in terms of an order issued by the Government of Gujarat (Urban Development & Urban Housing Department) on 22/2/1986. The petitioner's wife, therefore, came to be transferred to the establishment of the Ahmedabad Municipal School Board with effect from 1/9/1986, the date on which Sardarnagar area was included in the city limit of Ahmedabad.

4. It is further stated that the Government of Gujarat had introduced a Group Insurance Scheme for Government Employees and Panchayat Employees vide Government Resolution dated 23/11/1979. The said scheme was replaced by a new Group Insurance Scheme introduced by the Government of Gujarat vide its resolution dated 10/11/1981. The new scheme was introduced with effect from 1/4/1982

5. Mr.Ketan Dave, learned advocate appearing for the petitioner has submitted that as per the said new scheme introduced by the State Government, so far as the employees of the Government and Panchayat are concerned, they are provided with insurance coverage and certain benefits from saving funds. The employees were classified in different groups i.e. in group A to D,

depending upon the maximum pay available in the pay scale applicable to the employees concerned. The petitioner's wife belonged to group C as per the said classification and she was required to pay Rs.20 p.m. and was provided insurance coverage of Rs.20,000/-.

6. Mr.Dave has further submitted that the amount has been deducted from the salary of the petitioner's wife from 1979. The subscription to the period commencing from 1979 to December, 1987 was deducted from the salary and allowances by the District Panchayat Primary Education Committee up to August 1986 and by the Ahmedabad Municipal Corporation School Board authority from September, 1986 to August 1987. He has further submitted that the amount has been forwarded by the concerned authorities in the Government Treasury. He has further submitted that the said insurance scheme was subsequently discontinued by resolution dtd.3rd October, 1989 and the same was also subsequently approved by the School Board. He has further submitted that the scheme was discontinued with retrospective effect from 15/7/1987. Since the amount was deducted from the salary of the petitioner's wife and despite this fact, the claim under the insurance coverage which was granted to the petitioner's wife was not passed, the petitioner has to file the present petition before this Court.

7. This Court has passed interim order on 15/3/1991 whereby the respondent No.1 was directed to deposit a sum of Rs.20,000/- on or before 15/4/1991 and on deposit of the said amount, the Registrar of this Court was directed to invest the said amount in Fixed Deposit Receipt in any Nationalized Bank.

8. Since the amount has not been deposited by the State Government, the respondent No.2 i.e. School Board has deposited the said amount and it was invested in Fixed Deposit in the name of Registrar of this Court.

9. Mr.Shelat, learned advocate appearing for the respondent No.2 i.e. School Board has submitted that so far as respondent No.2 is concerned, the petitioner is not entitled claim any relief against the respondent NO.2. He has further submitted that the amount which was deducted from the salary of the petitioner's wife has already been deposited with the State Government. In this connection, he has invited my attention to the affidavit in reply filed on behalf of the respondent NO.2, wherein it was specifically submitted that w.e.f. 1/9/1986, the wife of the petitioner was ceased to be the Panchayat employee and therefore, the scheme ceased to be

applicable to her. The school was taken over by the Board from 1/9/1986. Communication dtd.15/7/1987 received from the Account Officer from the State of Gujarat inter-alia states that if any employee ceased to be Panchayat employee, insurance scheme is not applicable. He has further submitted that by letter dtd.22/8/1990, the State Government was informed that the amount deducted from the salary of the claimant with respect of the group insurance scheme was credited to the Government Account and it is for the State Government to pay the benefits to the claimant. He has further submitted that the State Government has also informed that unless the said amount is credited to the School Board Account, it is not possible to make the payment to the claimant. It is submitted that whatever amount has been deducted subsequently up to 1/9/1987, was deducted through mistake and the same has been credited to the State Government. The total amount so credited was Rs.2110/-.

10. Mr.HD Dave, learned Assistant Government leader appearing for the State has submitted that since the amount has already been deposited by the respondent NO.2 before this Court as per the order of this Court, the State is not liable to make payment to the petitioner. He, however, could not explain as to why the payment made by the respondent No.2 School Board on behalf of the respondent No.1 State Government should not be reimbursed to the respondent No.2 School Board.

11. Having heard the learned advocates appearing for the respective parties and after having gone through the record and pleadings of the parties, this court is of the opinion that the amount was deducted till the death of the petitioner's wife. The resolution was passed by the State Government on 3/10/1989 giving retrospective effect from 15/7/1987. However, this being welfare scheme, it is wrongly given retrospective effect. The authorities have deposited the amount deducted from the salary of the petitioner's wife with the State Government. Once the amount has been deducted and insurance coverage is granted, it is not just and appropriate for the authorities to deny the benefits under the Insurance Scheme to the petitioner. This Court has, therefore, rightly directed the respondent No.1 to deposit the said amount. Since the petitioner is entitled to have the benefits under the scheme, this Court hereby directs the Registrar of this Court to permit the petitioner to withdraw the amount which was deposited in the Fixed Deposit Receipt, along with the interest accrued thereon till this date, forthwith.

12. As far as the liability is concerned, admittedly, the amount has been deposited with the State Government and the State Government cannot escape from its liability. This Court is, therefore, of the view that the respondent No.2 School Board is entitled to claim the reimbursement of the said amount from the State Government. The respondent No.2 can, therefore, make the claim to the State Government for reimbursement of the aforesaid amount paid by it on behalf of respondent No.1 State.

13. With the above observations and directions, this petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

(K.A. PUJ, J.)

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